

Authorized Signature



**State of New Mexico
General Services Department**

Contract

Awarded Vendor:
0000054399
San Juan County
100 S Oliver Drive
Aztec NM 87410

Telephone No. (505) 334-1100

Contract Number: 60-690-15-13251AN

Payment Terms: See Contract

F.O.B.: See Contract

Delivery: See Contract

Ship To:
New Mexico Children, Youth and Families
Department
1120 Paseo de Peralta
Santa Fe NM 87503

Procurement Specialist: Natalie Martinez

Telephone No.: (505) 827-0251

Invoice:
NM Children, Youth and Families Department
Same as Ship To


For questions regarding this contract please contact:
Kathleen Branchal (505) 827-4305

Title: Juvenile Community Corrections Programs and Services

Term: January 14, 2015 – June 30, 2016

This Contract is made subject to the “terms and conditions” shown as indicated in this Contract.

Accepted for the State of New Mexico


New Mexico State Purchasing Agent

Date: 1/14/16

CONTRACT NO. 16-690-19498

STATE OF NEW MEXICO
FOR
Juvenile Community Correction Services

THIS AGREEMENT is made and entered into by and between the **Children, Youth and Families Department**, State of New Mexico, herein after referred to as the "agency", and **San Juan County** herein after referred to as the "Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions**

- A. "Procuring Agency" means an agency of the executive, legislative or judicial branches of New Mexico state government as well as local public bodies including cities, counties, public schools and institutions of higher education.
- B. "Products and Services Schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.
- C. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.
- D. "Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof.
- E. "New Mexico State Purchasing Agent" or "NMSPA" means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".
- F. "Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the Contractor to furnish items of tangible personal property or service to the procuring agency which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.
- G. "Procuring agency" means any state agency or local public body that chooses to procure products or services under this Agreement. Other units of government, including cities, counties, school districts, institutions of higher education and other jurisdictions not subject to the procurement authority of the SPA, are authorized to buy from this Agreement.

H. "Products and Services schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended with the prior approval of the Agreement Administrator. New products and services shall not be added to the Products and Services Schedule.

I. "You" and "your" refers to **San Juan County**. "We," "us" or "our" refers to the State of New Mexico, agencies, commissions, institutions, political sub-divisions and local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.

2. **Scope of Work**

Performance Outcomes:

Children and families receiving services through the Juvenile Community Corrections (JCC) program will improve their over-all functioning in the areas of safety, permanency, stability, and well-being. Services will address the following outcomes:

- Decreased involvement or termination of involvement with the Juvenile Justice System.
- Improved client competencies in social, living, coping and thinking skills.
- Improved academic performance.
- Improved client behavior at home and in the community.
- At least seventy-five (75) percent of clients will successfully complete the JCC Program.
- At least seventy-five (75) percent of clients will be satisfied with the JCC Program's services.

Performance Measures:

- Individualized Client Service Plan
- Casey Life Skills Assessments
- Client Satisfaction Survey
- Discharge Summary and Reports

Objective:

To provide a unique approach to working with adjudicated delinquent youth and their families; by utilizing a team approach which includes the client, family, contracted agency, local public schools staff, Juvenile Probation Office staff and other significant individuals in the client's life. The program shall provide participants with program services that are gender responsive, culturally competent and based on the client's individualized needs.

Goals:

JCC program meets the following goals:

- Divert adjudicated youth from incarceration.
- Provide services to assist incarcerated youth transitioning back into the community.
- Provide services and interventions for clients including community service opportunities and/or facilitating reasonable restitution to society and victims.

- Provide individualized services to the client and family that results in improvement in the areas of safety, permanency, and well-being.
- Implement an integrated data system and an evaluation mechanism that measures program utilization and effectiveness.

Activities:

- A. Provide JCC services to clients referred by the following entities: Juvenile Probation Office, District Court Judge, District Attorney, Public Defender or Private Attorney, Juvenile Correctional Facility and the CYFD Supervised Release Board. The clients must meet the target population(s) and any questions regarding the appropriateness of clients or capacity to meet the target population criteria shall be addressed to the Agency's Juvenile Justice Services Division and JCC Program Manager(s). The JCC target populations are defined as follows:
- All Adjudicated Youth who are on probation status who are at risk of further involvement with the Juvenile Justice System. This includes clients on Consent Decrees regardless of the level of adjudicated offense (misdemeanor, felony and probation violations are all eligible).
 - Committed youth who are on supervised release status. JCC providers may initiate JCC services and planning while the client is in CYFD custody.
 - Adjudicated youth on probation who are at risk of having their probation revoked.
- B. Ensure clients are presented before the Local Selection Panel (LSP), to receive approval for program participation.
- The LSP must be developed and ready to review applications.
 - Panel membership will be comprised of representatives from the Judiciary, the office of the District Attorney, the office of the Public Defender, the Children, Youth and Families Department, the County Sheriff or the Municipal Police Department, individuals representing local programs and private citizens.
 - LSP members shall hold as confidential all information received relating to referred cases and shall not release such information to public inquiry. All LSP members shall sign a statement agreeing to abide by the principals of confidentiality and waiver of liability. At no time will case materials be removed from the meeting site and all case materials will be returned to the JCC program representative upon completion of the review process.
 - Members of the LSP who have a conflict of interest with an applicant's case shall be required to excuse themselves from voting in regards to the applicant's approval or denial for participation in the JCC program.
 - LSP members shall discuss the case, approve, deny or defer action on the referral and complete and sign the CYFD Local Selection Panel Review Form. All LSP

- members shall sign the form (forms can be signed via fax). The decision of the panel may be appealed only if new information is available.
- To convene a panel at least fifty percent of the LSP must participate in order to vote on whether or not an applicant is approved to participate in JCC. LSP members may meet in person, via phone conference or by other electronic means.
 - Written results of the paneling must be sent to the referral source within five business days of the panel decision. If an applicant is denied for services, the written results must include the reasons for denial along with other recommendations of other types of services for the client.
- C. Provide the JCC service components listed in Compensation narrative, during each year of the contract period.
- Services will be provided in the following county: **San Juan.**
 - Services will be provided in a manner that complies with the current JCC Program Manual, all applicable Agency policies and procedures, and current Agency Administrative and Fiscal Standards incorporated herein by reference.
 - The Casey Life Skills Assessment and client's Service Plan shall be an integral part of the program for each client.
 - Contractor commitment to work with clients during traditional and non-traditional hours will be an integral part of the program.
 - Individualized and group services shall be an integral part of the program. Services will be delivered to both female and male clients following guiding principles and best practices, be gender responsive, culturally responsive and relationship based.
 - Family involvement shall be an integral part of the client's program, including but not limited to parent/guardian participation in the development of/ adjustment to the service plan, staffing meetings and any needed family support services.
- D. Ensure clients participate in program services for a minimum of a six (6) month probation term to a maximum of a twelve (12) month probation term.
- An exception to the program length will be allowed for clients who are returning to the community from a juvenile correctional facility or reintegration center with less than six months remaining on supervised release status.
 - Each JCC Program Director/Supervisor, after staffing the case with the Juvenile Probation Officer, has the authority to waive the minimum lengths of program participation with prior written approval from the Chief Juvenile Probation Officer or designee. A copy of the letter must also be submitted to CYFD's JCC Program Manager.
 - Permission for a client to extend time in the program over the 12 months must be given by the CYFD's JCC Program Manager. Failure to obtain prior approval may result in non-payment for the services provided beyond the 12-month maximum.

- E. Ensure the client's progression through the JCC program by addressing the client's individualized needs.
- The JCC Case Manager will conduct a Casey Life Skills Assessment upon each client's entrance and exit of the program.
 - Develop a service plan in conjunction with the client, family and JPO office.
 - The JCC Case Manager will assist the client in the successful completion of the service plan.
 - Case staffing meetings will be conducted at scheduled intervals designated in the current JCC Program Manual and will include the JCC Case Manager, client, parent(s)/guardians, and Juvenile Probation Officer. Additional individuals may attend a case staffing at the request of any team member with the approval of the JCC Case Manager.
 - The JCC Case Manager will provide a monthly progress report, no later than the 10th of each month for the previous month's services to the client's Juvenile Probation Officer prior to the client's next case staffing meeting.
 - The JCC Director/Supervisor will review all active client files every ninety days to monitor client's progress.
 - A Discharge Plan will be drawn up by the JCC Case Manager and the client during the client's participation in the JCC program and shared at the time of the client's final case staffing with parent(s)/guardians and Juvenile Probation Officer.
 - A Client Satisfaction Survey will be conducted for each client and recorded in the Agency Reporting Tracking Enterprise System (ARTES). The Contractor must ensure the survey process is conducted by a staff member other than the JCC Case Manager to ensure the client's anonymity.
 - Client Satisfaction Surveys must be filed in a separate location from the client's file and maintained by the Contractor and available during a CYFD JCC Program Manager's audit.
- F. Maintain a file on each client as outlined in the JCC Program Manual that contains, but is not limited to the items listed below. The Contractor must provide for proper confidentiality and security, in accordance with federal and state legal requirements of client files at all times.
- Referral and required referral attachments
 - Approval/denial of Local Selection Panel
 - Letter to referring party for acceptance or denial into the program
 - Client intake interview and consent forms
 - Releases of information
 - Casey Assessments
 - Service plan and service plan reviews

- Case notation
 - Client satisfaction survey [to be maintained separately]
 - Monthly reports
 - Supervisory file reviews
 - Discharge paperwork
 - Financial assistance requests
 - Any instrument/tool and/or methodology for measuring changes in client functioning is maintained in client file.
- G. Collaborate with the Agency's Juvenile Justice Services field offices and Juvenile Justice Services secure facilities and other agencies that may serve Agency clients, to coordinate and enhance services.
- H. Develop a process to immediately identify each client's Medicaid eligibility and/or SALUD enrollment status at intake. The process shall be documented and available for review by the CYFD JCC Program Manager.
- I. Establish a written policy with regard to Financial Assistance for clients which outlines the utilization and monitoring of the funds.
- The Juvenile Probation Office Supervisor or Chief must approve the purpose for which the funds will be used. Failure to obtain approval may result in nonpayment.
 - Financial Assistance shall be provided to the vendor in the form of a Contractor check. At no time will financial assistance be directly given to the clients.
 - Copies of receipts for purchased items must be sent to the CYFD JCC Program Manager.
 - The priority population for use of these funds is indigent youth who are in need of services or goods that will assist in successfully completing their Service Plan.
 - The Contractor must follow the Financial Assistance guidelines set forth by the current JCC Program Manual.
- J. Establish and implement the following administrative requirements:
- Maintaining CYFD Criminal Background checks for all staff.
 - Yearly reviews of Local Selection Panel Members.
 - Designated staff to maintain at least 20 hours of related training each year.
 - Development of policy and procedures consistent with the CYFD JCC Program Manual.
 - Development of a quality assurance process for the JCC Program.
 - Sharing of JCC programming and budget information with local Board Members.

- K. Implement a volunteer service component, as an integral part of the program, including but not limited to, Local Selection Panel (LSP) participation, please refer to article XXI. Background Checks, page 6.
- A written policy must be established regarding the recruitment, screening, training and supervision of volunteer services.
 - Each volunteer must undergo a background check and sign a confidentiality and waiver of liability form.
 - Volunteer services must be appropriate to the needs of the clients and documented in the client file.
- L. Implement Community and Education Development, as an integral part of the program.
- Community Education and Development activities will represent efforts made at the local, state and/or national levels to assure a match between the needs of the target client population and the services provided in juvenile justice, public safety and client well-being.
 - Documentation shall include a log of activities including dates, times, persons performing the activities and description of these activities and must be available for the CYFD JCC Program Manager review.
- M. Submit electronically to the Agency monthly demographic, service provision, billing, and outcome information, as defined in the JCC Program Manual and Agency Reporting Tracking Enterprise System (ARTES) User's Manual no later than the 10th of each month for the previous month services.
- Referral, intake, client survey and discharge data must be entered into the Agency's ARTES within 30 days of the client's acceptance into and release from the program.
 - The billing form, with an original authorized signature, must be sent to the CYFD JCC Program Manager at the address listed below. Non-compliance may result in non-payment or the delay of reimbursement.
- Attn: Louis Pacias, JCC Program Manager
Children, Youth, and Families Department
Juvenile Justice Services
4359 Jager Drive NE Suite C
Rio Rancho, NM. 87144
- N. Prepare and submit reports, upon request of the Agency, in a format approved by the Agency.
- A quarterly report detailing program referral statistics and client progress shall accompany the monthly billing statement on a quarterly basis. The Agency's JCC Program Manager will establish the report format.
 - A written "Final Report" shall be submitted to the CYFD's JCC Program Manager at the end of the contract term. The Final Report will detail the

activities and accomplishments of the program and outcomes achieved. Additionally, the Contractor may describe how the program could be improved if it was continued.

3. **Compensation**

Initial Casey Life Skills Assessment and Service Plan	\$250.00 per product
Closing Casey Life Skills Assessment and Discharge Plan	\$200.00 per product
90 Day Service Plan Review	\$100.00 per product
Case staffing (client, parent, JPO)	\$60.00 per product
Job Preparation-Individual	\$50.00 per hour
Job Preparation- Per Client Group Rate	\$20.00 per hour
Skills Training and Development-Individual	\$50.00 per hour
Skills Training and Development-Per Client Group Rate	\$20.00 per hour
Family Support Service-Individual	\$50.00 per hour
Family Support Service-Per Client Group Rate	\$20.00 per hour
Education Development –Individual	\$50.00 per hour
Education Development-Per Client Group Rate	\$20.00 per hour
Tutoring –Individual	\$50.00 per hour
Tutoring –Per Client Group Rate	\$20.00 per hour
Case Management	\$40.00 per staff hour
Medicaid Eligibility	\$40.00 per staff hour
Facility Transitional Services-Individual	\$50.00 per hour
Facility Transitional Services-Per Client Group Rate	\$20.00 per hour
Transportation	\$20.00 per staff hour
Community Service Management- Individual	\$35.00 per hour
Community Service Management – Per client group Rate	\$20.00 per hour
Financial Assistance	\$500.00 max per client
Girl's Circle	\$25.00 per client hour
Boy's Council	\$25.00 per client hour
Program Support- The contractor may bill up to 12% of their total monthly unit rate reimbursement for the program support.	

The total compensation on this agreement for FY16 shall not exceed \$30,000.00 including New Mexico gross receipts tax.

4. **Payment Provisions**

All payments under this Agreement are subject to the following provisions.

- A. Acceptance - In accordance with Section 13-1-158 NMSA 1978, the agency shall determine if the product or services provided meet specifications. No payment shall be made for any products or services until the products or services have been accepted in writing by the procuring agency. Unless

otherwise agreed upon between the procuring agency and the Contractor, within fifteen (15) days from the date the procuring agency receives written notice from the Contractor that payment is requested for services or within thirty (30) days from the receipt of products, the procuring agency shall issue a written certification of complete or partial acceptance or rejection of the products or services. Unless the procuring agency gives notice of rejection within the specified time period, the products or services will be deemed to have been accepted.

- B. Issuance of Orders - Only written signed orders are valid under this Price Agreement. A Purchase Order is the approved form for state agencies issuing Contract Orders under this Price Agreement. Other authorized government entities may utilize Purchase Orders or forms adapted by them for their own use.
- C. Payment of Invoice - Upon acceptance that the products or services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of invoice. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of 1.5 % per month. Contractor may submit invoices for payment no more frequently than monthly. Payment will be made to the Contractor's designated mailing address. Payment on each invoice shall be due within 30 days from the date of the acceptance of the invoice. The Procuring Agencies and the State agree to pay in full the balance shown on each account's statement, by the due date shown on said statement.
- D. Late Charges: If the State fails to pay as required above, the Contractor may assess a late fee on the unpaid balance of more than 60 days. Late fees will be assessed at a rate based upon the billing address of each State or Procuring Agency account; therefore, the periodic (monthly) late fee rate shall be 1.5% and the corresponding Annual Percentage Rate for the State of New Mexico will be 18%. No late fee on new purchases will be assessed during the billing cycle when the purchase was made.

5. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE AGENCY OR THE STATE PURCHASING AGENT, IF REQUIRED. This Agreement shall begin on date approved by the agency or the State Purchasing Agent, if the State Purchasing Agent has signed this Agreement, and end on **June 30, 2016**. The agency reserves the right to renew the contract on an annual basis for an additional seven (7) years by mutual Agreement not to exceed a total of **eight (8) years** in accordance with NMSA 1978 §13-1-150.

6. **Default and Force Majeure**

The State reserves the right to cancel all or any part of any orders placed under this contract without cost to the State, if the Vendor fails to meet the provisions of this contract and, except as otherwise provided herein, to hold the Vendor liable for any excess cost occasioned by the State due to the Vendor's default. The Vendor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subContractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subContractor were obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery scheduled. The rights and remedies of the State provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this contract.

7. Termination

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraphs 7.A and 17, the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 17, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

8. Amendment

This Price Agreement may be amended by mutual Agreement of the State Purchasing Agent and the Contractor upon written notice by either party to the other. An amendment to this Price Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS issued prior to the effective date of the amendment as mutually agreed upon, and as published by the State Purchasing Agent. Amendments affecting price adjustments and/or extension of contract expiration are not allowed unless specifically provided for in the bid and contract documents.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Paragraph 7 herein, or to agree to the reduced funding.

9. **Status of Contractor**

The Contractor, and Contractor's agents and employees, are independent Contractors for the agency and are not employees of the State of New Mexico. The Contractor, and Contractor's agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by the Contractor for income tax purposes, including without limitation, self-employment tax and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has written authority to do so, and then only within the strict limits of that authority.

10. **Assignment**

A. Neither this price Agreement nor any orders placed under this price Agreement, nor any interest therein, nor claim thereunder, shall be assigned or transferred by the Vendor, except as set forth in subparagraph 10B below or as expressly authorized in writing by the State Purchasing Agent's office. No such assignment or transfer shall relieve the Vendor from the obligations and liabilities under this price Agreement.

B. Vendor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the State as to goods, services, and materials purchased in connection with this bid are hereby assigned to the State.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

11. **Non-Collusion**

In signing this Agreement, the Vendor/Contractor certifies the Vendor/Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

12. **Inspection of Plant**

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this contract.

13. **Commercial Warranty**

The Vendor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other clause of this order. Vendor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

14. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

15. **Records and Audit**

During the term of this Agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the agency, the State Auditor and other appropriate state and federal authorities. The agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the agency to recover excessive or illegal payments. The Contractor agrees to comply with the requirements and regulations set forth in **Attachment 1 - CYFD Administrative and Fiscal Standards**, unless the Contractor effectively demonstrates in writing, with written approval from CYFD, that any specific Standard is inapplicable to such Contractor.

16. **Appropriations**

The terms of this Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the legislature,

this Agreement, and any orders placed under it, shall terminate upon written notice being given by the agency to the Contractor. The agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

17. **Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

18. **Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the procuring agency.

19. **Conflict of Interest**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee

of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Paragraph 20 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Paragraph .

20. Approval of Contractor Representative(s)

The agency reserves the right to require a change in Contractor representative(s) if the assigned representative(s) are not, in the opinion of the agency, adequately serving the needs of the State of New Mexico.

21. **Scope of Agreement; Merger**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

22. **Notice**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

23. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

24. **Indemnification**

The Contractor shall hold the state and its agencies and employees harmless and shall indemnify the state and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the agency, its officers or employees.

25. **New Mexico Employees Health Coverage**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

26. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

27. **Limitation of Liability**

The Contractor's liability to the agency, or any procuring agency, for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the agency's, or the procuring agency's, claim. The foregoing limitation does not apply to paragraph 25 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

28. **Arbitration**

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq.*

29. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or agency or entity; and (5) the Contractor's response to the request for proposals.

30. **Workers' Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the agency.

31. **Inspection**

If this contract is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

32. **Inspection of Services**

If this contract is for the purchase of services, the following terms shall apply.

A. Services, as used in this Article, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

(1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

(2) reduce the contract price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

(1) by contract or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or

(2) terminate the contract for default.

THE PROVISIONS OF THIS ARTICLE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PURCHASING AGENT'S OR OTHER PARTY'S TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

33. **Insurance**

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this contract). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

34. **Impracticality of Performance**

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

35. **Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

36. **Enforcement of Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

37. **Patent, Copyright and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the state and its agencies against any claim that any product or service provided under this Agreement infringes any patent, copyright to trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the agency based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the state for all costs, attorneys' fees and amount of the judgment. To qualify for such defense and or payment, the agency shall:

- i. give the Contractor prompt written notice within 48 hours of any claim;
- ii. allow the Contractor to control the defense of settlement of the claim; and
- iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

- i. provide the agency the right to continue using the product or service and fully indemnify the agency against all claims that may arise out of the agency's use of the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or,
- iii. accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the agency to the extent such modification is the cause of the claim.

38. **Survival**

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement

39. **Employee Pay Equity Reporting**

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more

employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself. Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

40. **Disclosure Regarding Responsibility**

A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:

1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph B of this disclosure;
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this

Agreement.

E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.

F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

41. **Public Works Minimum Wage Act**

A. If this contract is in excess of sixty thousand dollars (\$60,000) and is for construction alteration, demolition or repair (or any combination of these including painting and decorating of state public buildings, state public works or state public roads and requires or involves the employment of mechanics, laborers or both), the requirements of the Public Works Minimum Wage Act, as set forth in Sections 13-4-10 through 13-4-17 are hereby incorporated into this Contract.

B. The minimum wages and fringe benefits to be paid to various classes of laborers and mechanics at all tiers under this contract shall be based upon the wages and benefits determined by the Director of the Labor Relations Division of the New Mexico Department of Workforce Solutions at the time of individual contract award under the authority of Sections 13-4-10 through 13-4-17 NMSA 1978. Using Agencies are responsible for contacting the Labor Relations Division for the current wage rate decision applicable to any resultant contract issued under this agreement and incorporation therein.

C. Such incorporated Wage Decision shall stipulate the Contractor, Subcontractor, Employer, or person acting as Contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Subsection B of Section 13-4-11 NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

D. The Contractor receiving any such award to which the Act applies shall cause this provision to be placed in all subcontracts awarded by Contractor.

E. In the event during performance under this Contract, if the Director of the Labor Relations Division makes a written finding that any laborer or mechanic employed on the site of the project has been or is being paid as a result of a willful violation a wage rate or fringe benefit rate less than the rates required, the contracting Agency may, by written notice to the Contractor, subcontractor, employer or person acting as a Contractor, terminate the right to proceed with the work or part of the work as to which there has been a willful violation to pay the required wages or fringe benefits, and the contracting Agency may prosecute the work to completion by contract or otherwise, and the Contractor or person acting as a Contractor and the Contractor's or person's sureties shall be liable to the State for any excess costs occasioned thereby. Any party receiving notice of termination of a project or subcontract may appeal the finding of the Director of the Labor Relations Division as provided in the Public Works Minimum Wage Act.

42. **Suspension, Delay or Interruption of Work**

The State Purchasing Agent or other party to this Agreement may, without cause, order the Contractor, in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the State Purchasing Agent or other party to this Agreement may determine. The contract sum and contract time shall be adjusted for increases in cost and/or time associated with Contractor's compliance therewith. Upon receipt of such notice, Contractor shall leave the jobsite and any equipment in a safe condition prior to departing. Contractor must assert rights to additional compensation within thirty (30) days after suspension of work is lifted and return to work is authorized. Any compensation requested for which entitlement is granted and the contract sum adjusted, shall have profit included (for work completed) and for cost only (not profit) for Contractor costs incurred directly tied to the suspension itself and not otherwise covered by Contract remedy. Any change in Total Compensation must be reflected in an Amendment executed pursuant to Section 8 of this Agreement.

43. **Administrative Fees**

RESERVED.

44. **Notification**

Either party may give written notice to the other party in accordance with the terms of this Paragraph 45. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To agency:

Lawrence O. Maxwell, State Purchasing Agent

Office address:
(for express carrier
and hand deliveries)

1100 South St. Francis Drive
Joseph M. Montoya Building, Rm. 2016
Santa Fe, New Mexico 87505-4108
(505) 827-0472 (voice)
(505) 827-2484 (fax)
Lawrence.maxwell@state.nm.us

To Contractor: Traci Neff
San Juan County
851 Andrea Dr.
Farmington, NM 87401

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 44. The carrier for mail delivery and notices shall be the agent of the sender.

45. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

46. **Headings**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by:

By: 
Monique Jacobson, Cabinet Secretary or Designate


Date: 1/7/16

By: 
Michael Heitz, CYFD Legal Counsel or Designate

Date: 1/5/16

By: 
Sandra Steckler, CYFD Chief Financial Officer

Date: 1-7-16

By:  COO
Contractor

Date: 12/30/15


The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 01-508632-001

By: 
Taxation and Revenue Department

Date: 1/8/16

This Agreement has been approved by the State Purchasing Agent of New Mexico:


State Purchasing Agent

Date: 1/14/16

APPROVED AS TO FORM
SAN JUAN COUNTY ATTORNEY



Attachment 1

CHILDREN, YOUTH AND FAMILIES DEPARTMENT'S
ADMINISTRATIVE
AND
FISCAL STANDARDS

For Sole Proprietors,
For Non-Profit Organizations,
Local Bodies of Government,
And
For-Profit Incorporated Entities

Revised September 3, 2013

Note: All contractors are required to adhere to all local, state and federal regulations as applicable to their operations. All contractors are required to follow audit and reporting requirements set forth in this document. In the event of a contradiction between these standards and contract requirements the contract agreement supersedes the Administrative and Fiscal Standards.

A. ADMINISTRATIVE STANDARDS

For Non-Profit Organizations (with the exception of New Mexico higher education institutions)

1. The Board shall ensure that the agency has current articles of incorporation that meet all of the legal requirements of the governmental jurisdiction in which the contractor is located.
2. The Board shall ensure that the agency has current by laws that are filed with the appropriate local, state, or federal body. At a minimum, the agency by-laws should include:
 - a. Membership (types, qualification, rights, duties);
 - b. Size of Board of Directors;
 - c. Method of selection and removal;
 - d. Duties and responsibilities of officers;
 - e. Committees;
 - f. Quorums;
 - g. Recording of minutes;
 - h. Method for amending by-laws.
3. The Board shall ensure that the agency complies with applicable legal requirements and regulations of all governmental and legally authorized agencies under whose authorities it operates. These include, but are not limited to those regarding equal employment opportunity, workers compensation, unemployment insurance, affirmative action, safety, licensing, etc.
4. Board members shall be residents of the area served by the organization and representative of the social, economic, linguistic, ethnic, and racial target population. The agency shall not employ a person related to a Board member by consanguinity or affinity within the third degree. This includes, but is not limited to, spouse, mother, father, brother, sister, grandparents, aunt, uncle, niece, nephew, first cousins, mother-in-law, father-in-law, brother-in-law or sister-in-law.
5. A permanent record shall be kept of all meetings of the Board. Minutes of the meetings of the agency's Board are required in order to accurately record the decisions made and actions taken. These minutes shall include, but not be limited to, meeting date, names of members attending, topic discussed, decisions reached, actions taken, and attachment of any documents referenced. Board minutes shall be signed and approved by an officer of the Board.

For All Contractors

Personnel

1. The contractor shall have a current and dated organization chart that accurately reflects the staff structure of authority, responsibility and accountability within the organization. The organizational chart must illustrate the relationship of each position or department to all other positions or departments within the organization.
2. The contractor shall have written personnel policies and procedures. All policies and procedures shall be reviewed annually, and any changes, additions, deletions, etc., shall be dated. Procedures must be in place that allows employees to provide input into changes in agency and personnel policies and procedures.
3. The contractor shall maintain current, written job descriptions and job qualifications for all positions (staff, consultants and direct service volunteers) in the agency. Each job description shall include, at a minimum:
 - a. Job title;
 - b. Salary range;
 - c. Duties;
 - d. Responsibilities of the positions;
 - e. Required minimum experience;
 - f. Required minimum training;
 - g. Required minimum education.
4. The contractor shall maintain a current, accurate and confidential personnel record for each paid and direct service volunteer employee. A personnel record on each employee shall contain, at a minimum;
 - a. Job description;
 - b. Initial application/resume;
 - c. Documentation of reference letters;
 - d. Result of employment investigation;
 - e. Background checks;
 1. CYFD contractors that have or could have primary custody of children for at least twenty hours per week are required to comply with NMAC 8.8.3 et. seq. requiring background checks on any employee, staff, volunteer or student intern, that has direct care responsibilities or potential unsupervised physical access to clients. The contractor must submit to CYFD Background Check Unit fingerprint cards and the appropriate fee for such employees, volunteers or staff required having background checks. CYFD Background Check Unit will conduct nationwide, state and abuse and neglect background checks on required staff or volunteers in accordance with NMAC 8.8.3 standards. A CYFD eligibility letter must be in the employee, volunteer or staff member's personnel file prior to that individual having any unsupervised direct contact or unsupervised potential access to clients.
 - f. Education/experience required;
 - g. Wage and salary information;
 - h. Job performance evaluation;
 - i. Documentation/verification of all previous and ongoing training (including all component specific training and education);

- j. Incident reports;
- k. Commendations or disciplinary actions (if any).

This information must be reliable, accurate and current. All employee records must be kept in a locked file to ensure confidentiality.

- 5. The contractor shall be headed by a director. The director shall be responsible for the daily operation of the agency through decision-making, authorization of expenditures, and the implementation of policies and procedures.

II. Physical Facilities

The physical facilities must meet all licensing requirements per classification and should be located, constructed, equipped and operated to promote the efficient and effective conduct of the contractor's programs, to protect the health and safety of the persons serviced and the staff to promote the integration of those served into the community, to be accessible to persons served, staff and the community, meet the American's with Disabilities Act (ADA) and the Drug-Free Workplace Act of 1988.

A. FISCAL STANDARDS

For All Contractors

III. Compliance

- 1. The contractor shall comply with all federal and state statutes, rules and regulations. Cost principles, administrative requirements and audit requirements, applicable to federal grants shall apply to state funds. See attached Source Sheet.
- 2. The contractor shall comply with all aspects of the provision of the contract, including all insurance, bonding and audit and financial reporting requirements.

Insurance

- 1. The contractor, with the exception of New Mexico higher education institutions, shall obtain and maintain at all times during the term of this contract an Employee Dishonesty Policy covering the activities of the contractor in the amount of no less than 25% of the total (cumulative) dollar amount of the current CYFD contract(s).
- 2. The contractor shall obtain and maintain at all times during the term of this contract a general and professional liability insurance policy issued by an insurance company licensed to do business in the State of New Mexico. The policy shall include liability insurance coverage provided in the amount of at least \$100,000 for damage to or destruction of property arising out of a single occurrence; \$300,000 to any person for any number of

claims arising out of a single occurrence for all damages other than property damage; or \$500,000 for all claims arising out of a single occurrence. The policy shall be secured by the contractor within thirty (30) days of the effective date of the current contract.

3. The contractor, with the exception of New Mexico higher education institutions if insured by General Services Department's Risk Management Division, shall secure and maintain sufficient fire and extended hazard insurance on all property in the custody of the contractor, which is furnished or owned by the Department or in which the Department has a financial interest, within thirty (30) days of the effective date of the current agreement. Sufficient insurance, for the purposes of this paragraph, means enough to cover CYFD's loss, if any to such property, in the event of fire or other hazard.
4. The contractor, with the exception of New Mexico higher education institutions if insured by General Services Department's Risk Management Division, shall name Children, Youth and Families Department as an "Additional Insured" with the insurance carrier of the contractor's liability insurance. A copy of the contractor's "Certificate of Liability Insurance" proving compliance with all the above insurance requirements must be available upon request.

IV.

V. Fiscal Books of Records

The contractor must maintain the following books of record:

1. Chart of Accounts
2. General Ledger
3. Cash receipts and Cash Disbursements Journals
4. General Journal of adjusting entries, correcting entries, accrual entries, and cost allocation entries if not provided for in cash journals.
5. Subsidiary ledgers, if applicable to the organization.
6. Any Capital Outlay Inventory purchased with CYFD funding includes at a minimum:
 - a. Description of property;
 - b. Serial number or other ID number;
 - c. Date of purchase;
 - d. Acquisition cost by funding source(s);
 - e. Location and use of property;
 - f. Disposition data including date and price, if any.
7. Payroll journals and employee earnings records.
8. Fiscal Policy and Procedures that must include:

- a. Handling of cash/checks;
- b. Handling of voided checks;
- c. Authorized check signatures;
- d. Bank reconciliations;
- e. Separation of duties;
- f. Accounting system;
- g. Travel;
- h. Cost allocation method;
- i. Accounting policies for donations.

VI. Reports

1. The contractor shall complete in full the State and Federal payroll tax forms in accordance with required time period and shall insure payroll taxes are paid within the required time frame.
2. The contractor shall complete in full and submit the required forms of the State Department of Labor.
3. The contractor shall submit timely program and financial reports to the funding agencies as specified in the contracts.

Retention of Records

The following are the requirements for the retention of financial records:

1. The contractor shall maintain for three (3) years, (in addition to current year records) detailed accounting and billing records which indicate the date, time, and nature of services rendered, records relating to contract services, and all operating financial documentation which shall be subject to inspection by the Department and if applicable, the State Auditor or their designee.
2. The Department shall have a right to audit billings and related documents both before and after payment. Payments made under a contract between the contractor and the Department shall not foreclose the right of the Department to recover excessive, illegal payments, and/or payments which are not in accordance with the contract.
3. The contractor shall maintain the funds from the CYFD contract separately in accurate financial records, books, files, and reports in accordance with generally accepted accounting principles, state and federal laws and regulation, and the requirements of the Departments as described in this Administrative and Fiscal Standards Guidance.
4. The financial management systems established by the contractor shall ensure it provides fiscal and budgetary controls as well as sound accounting procedures. A Schedule of Revenues & Expenditures Budget to Actual Comparison for each contract must be prepared

and submitted to the Department at the same time as the annual financial audit or financial statement. The Schedule must include the approved original budget for the fiscal year, revised budget, actual revenue and expenditures and a variance column.

Audits

NOTE: Audit and financial reporting requirements are applicable to all contractors of Children, Youth and Families Department.

1. Sole proprietor contractors receiving Department funds under \$100,000.00 must submit to the Department the Sole Proprietor Business Reporting Form "Schedule C". Sole Proprietor billings are subject to review by the CYFD contract and program site reviewers and must be available upon request. A Sole Proprietorship is a type of business entity that is owned and run by one individual and in which there is no legal distinction between the owner and the business.
2. Audits for a contractor receiving under \$150,000.00 per year in cumulative Department funds (a total of all CYFD contracts awarded to the contractor within a fiscal year) whose Board has elected to not conduct an audit must comply with the following:
 - a) The contractor shall prepare financial statements that include a Revenue and Expenditure – Budget to Actual Comparison, Balance Sheet or Statement of New Assets and Income Statement or Statement of Activities. The contractor shall disclose the method of accounting used (cash or accrual) to prepare such statements. The Revenues and Expenditures – Budget to Actual Comparison statement must include the original budget for the fiscal year as approved by the Board, revised budget, actual revenue and expenditures and variance column. A cash disbursement and cash receipt journal cannot take the place of the Balance Sheet and Income Statement. These financial statements shall be available upon request to the Department's Contract/Audit Unit within three (3) months of the contractor's fiscal year end.
 - b) This section (Section 2) does not apply to sole proprietor contracts covered under Audits section 1.
3. Audits for a contractor receiving \$150,000.00 to \$300,000.00 per year in cumulative Department funds (a total of all CYFD contracts awarded to the contractor with in a fiscal year) whose Board has elected to not conduct an audit must comply with the following:
 - a) The contractor shall have an Independent Auditor's Report of Agreed-Upon Procedures (AUP) to ensure compliance with contract requirements in accordance with General Accepted Accounting Practice (GAAP). The AUP report shall be available upon request to the Department's Contract/Audit Unit within nine (9) months of the contractor's fiscal year end.
 - b) The contractor shall ensure that the selected accounting firm performing the AUP report is rotated every six (6) years (or less if mandated by the State Auditor) with a

minimum two-year break. The selected accounting firm shall not have provided non-auditing services within the year being reviewed.

4. Audits for a contractor receiving \$300,000.00 or greater per year in cumulative Department funds (a total of all CYFD contracts awarded to the contractor within a fiscal year):
 - a) The contractor shall have an Independent Audit Report that conforms to the General Accounting Standards (Yellow Book) as recommended by GAO. This Independent Audit Report shall be available upon request to the Department's Contract/Audit Unit within nine (9) months of the contractor's fiscal year end. The contractor must also submit a copy of any Management Letter Comments issued by the Independent Auditor in a separate report.
 - b) The contractor shall ensure that the auditor or auditing firm performing the audit report is rotated every six (6) years (or less if mandated by the State Auditor) with a minimum two year break. The selected auditor shall not have provided non-auditing services within the year being audited.
5. Audit for a contractor receiving over \$500,000.00 per year in cumulative Federal funds (a total of all contracts awarded to the contractor within a fiscal year) the contractor must receive an audit as required by the U.S. Office of Management and Budget, Circular A-133 Audits of States, Local Governments and Non-Profit Organizations, and U.S. Office of Management and Budget, Circular A-21, Cost Principles for Educational Institutions. The contractor must have available upon request a copy of any Management Letter Comments issued by the Independent Auditor in a separate report.
 - a) The Contractor must have available upon request their audited financial statements within nine (9) months of their fiscal year end to the Agency's Contract/Audit Unit. The Contractor must also have available upon request the Management Letter Comments issued by the Independent Auditor in a separate report.
 - b) The contractor shall ensure that the auditor or auditing firm performing the audit report is rotated every six (6) years (or less if mandated by the State Auditor) with a minimum two-year break. The selected auditor shall not have provided non-auditing services within the year being audited.
6. Financial Statements, AUP and Audits must be mailed to:

Children, Youth and Families Department
Contract/Audit Unit
P.O. Box 5160
Santa Fe, NM 87502

SOURCE SHEET

a. ADMINISTRATIVE REQUIREMENTS

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; also known as the Common Rule.

OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

VII. COST PRINCIPLES

OMB Circular A-21, Cost Principles for Educational Institutions

OMB Circular A-87, Cost Principles for State and Local Governments.

OMB Circular A-122, Cost Principles for Non-Profit Organizations.

FASB and AICPA Statements and Professional Pronouncements.

VIII. AUDITS

OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations.

OMB Compliance Supplement for Audits of States, Local Governments and Non-Profit Organizations.

U.S. General Accounting Office, Government Auditing Standards, (The Yellow Book, current revision).

FASB and AICPA Statements and Professional Pronouncements.

Attachment 2 – Business Associate Agreement

This is a business associate agreement in compliance with 45 CFR Section 160.504(e)(2) of the HIPAA privacy rule. Contractor understands that it may be considered a business associate of the Department under the HIPAA Privacy and Security Rules. Accordingly, the parties agree:

- The disclosures the Department will make to Contractor of any information that identifies an individual and includes information about the individual's health (protected health information), whether in electronic or physical form, shall be limited to the minimum reasonably necessary for Contractor's delivery of services described in the Scope of Work to which the parties have agreed to in the Contract.
- Any disclosures by Contractor of any individual's protected health information inconsistent with this agreement are strictly prohibited and shall be cause for termination of the Contract. Contractor shall take all reasonable steps to avoid such disclosures, including but not limited to implementation of all practical administrative, physical and technical safeguards.
- After the expiration of this Contract, whether because a party has cancelled it, it is fully executed or for any other cause, Contractor shall return all documents containing any individual's protected health information to the Department. Contractor also agrees that it shall take reasonable affirmative precautions to avoid any unauthorized disclosures of protected health information to third parties.
- Contractor understands it is responsible for reporting unauthorized disclosures, including but not limited to electronic security violations, to the Department's privacy office or the federal Office of Civil Rights. Contractor also understands it is responsible for reporting any other disclosure for purposes other than treatment, payment or operations to the Department's privacy office.
- Contractor agrees to bind their agents and subcontractors to the terms of this agreement.
- Contractor understands an individual has the right to inspect and request changes to the protected health information the parties use or create and that an appropriate privacy officer and/or the federal Office of Civil Rights has the authority to inspect the parties' procedures for management of the individual's protected health information.